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Before the
Federal Communications Commission
Washington, D.C. 20554

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FCC 06-128

In the Matter of

COMMERCIAL RADIO SERVICE, INC.**EB DOCKET NO. 06-168**

Licensee of Private Land Mobile Stations
WNDS861, Reelsville, Indiana; WNIL729, Paxton,
Indiana; WPCJ772, West Terre Haute, Indiana; and
WPNU312 Greencastle, Indiana/West Terre Haute,
Indiana

File No. EB-06-IH-1362
NAL Acct. No. 200632080166

Licensee of Commercial Land Mobile Station
WNGE348, West Terre Haute, Indiana

TIMOTHY M. DOTY

Licensee of General Radiotelephone Operator
License PG1814366; and Amateur Radio Operator
and Licensee of Amateur Radio Station WB9MDC,
West Terre Haute, Indiana

ORDER TO SHOW CAUSE**Adopted: August 28, 2006****Released: August 30, 2006**

By the Commission:

I. INTRODUCTION

1. By this *Order to Show Cause*, and pursuant to Sections 312(a) and (c) of the Communications Act of 1934, as amended ("Act"),¹ the Federal Communications Commission ("Commission"), hereby orders Commercial Radio Service, Inc. ("CRS") and Timothy M. Doty to show cause in a hearing proceeding before an administrative law judge why their respective above-captioned authorizations should not be revoked. The information before the Commission raises substantial and material questions as to their basic qualifications to be and remain Commission licensees because of the felony convictions of Mr. Doty and apparent misrepresentations and/or lack of candor by CRS regarding such convictions in applications filed with the Commission. This proceeding will also determine whether forfeitures should be imposed against CRS for willfully and repeatedly violating Commission rules relating to truthful and accurate statements to the Commission and for failing to timely amend pending Commission applications to disclose Mr. Doty's convictions.

II. BACKGROUND

2. In late 2005, the Commission received information suggesting that CRS may not have properly disclosed information about felony convictions of Timothy M. Doty in applications filed with

¹ 47 U.S.C. §§ 312(a) and (c).

the Commission. Thereafter, the Enforcement Bureau sent a letter of inquiry ("LOI") to CRS seeking information about CRS' operations, Commission licenses, previous filings, and whether any principal, officer, or director of CRS had ever been convicted of a felony.²

3. According to its LOI response,³ CRS is engaged in the sales and service of two-way radio communications equipment. Since January 1, 1990, CRS has held authorizations for the above-captioned licensed radio systems. Over that same period, Timothy M. Doty has, at all relevant times, been a director and 50% shareholder of CRS. Mr. Doty also was a CRS officer from at least January 1, 1990 through May 9, 2006. Mr. Doty holds a General Radiotelephone Operator License, as well as an Amateur Radio License, both of which are listed in the above caption.

4. Publicly available records reveal that, on May 31, 1991, Mr. Doty was found guilty in the U.S. District Court for the Southern District of Indiana, Terre Haute Division, of violating 18 U.S.C. § 2512(1)(b), involving the manufacture and possession of unauthorized satellite TV signal descrambling devices, a felony. He was sentenced to three years probation and a \$2,000 fine.

5. In addition, publicly available records indicate that, on November 15, 2001, Mr. Doty was found guilty in State of Indiana Vigo Superior Court, Division 5, of felony possession of a controlled substance. He was sentenced to 18 months in the Indiana Department of Corrections, which sentence was suspended except for 30 days.

6. Subsequent to the first of Mr. Doty's felony convictions, CRS filed at least two license applications with the Commission in which CRS answered "No" to the question inquiring whether the applicant or any party directly or indirectly controlling the applicant had ever been convicted of a felony in state or federal court.⁴ As noted above, at the time of these filings, Mr. Doty was an officer, director, and 50% shareholder of CRS.

7. Subsequent to the second of Mr. Doty's felony convictions, CRS filed at least five license renewal-only applications.⁵ Renewal-only applications are streamlined applications for licensees that seek to renew their authorizations and do not need to update any information previously provided relating

² See Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Commercial Radio Service, Inc., dated May 23, 2006.

³ See Letter from Russell D. Lukas, Esquire, Lukas, Nace, Gutierrez & Sachs, counsel for Commercial Radio Service, Inc., to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated June 22, 2006 ("LOI Response"). In addition to its LOI Response, CRS filed a request seeking confidential treatment of certain information provided with the response. We do not rule on CRS' request at this time because it is unnecessary to do so for purposes of this Order. Consistent with the request, however, this Order relies on information in the public domain and the portions of CRS' LOI Response for which it did not seek confidential treatment.

⁴ See, e.g., Application for Mobile Radio Service Authorization, FCC Form 600 (For New Station), File No. D122642, filed March 1, 1999; FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, FCC Form 601 (For Modifications of Station WNGE348), File No. 253365, filed Sept. 29, 2000.

⁵ See, e.g., FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, FCC Form 601 (For Renewal-Only of Station WNIL729), File No. 1375615, filed July 8, 2003; FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, FCC Form 601 (For Renewal-Only of Station WPCJ772), File No. 1524776, filed Nov. 24, 2003; FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, FCC Form 601 (For Renewal-Only of Station WPNU312), File No. 1740183, filed May 18, 2004; FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, FCC Form 601 (For Renewal-Only of Station WNGE348), File No. 2067489, filed March 4, 2005; and FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, FCC Form 601 (For Renewal-Only of Station WNDS861), File No. 2316369, filed September 15, 2005.

to, among other things, basic qualifying information, including felony convictions. If updates are required, renewal applicants must indicate as much and file renewal/modification applications instead.⁶ Under the Commission's Universal Licensing System, renewal-only applications do not require licensees to provide information relating to felony convictions. Renewal/modification applications, by contrast, do require licensees to provide information about felony convictions.⁷ By filing renewal-only applications rather than renewal/modification applications, CRS failed to provide information to the Commission about Mr. Doty's felony convictions that it was otherwise required to disclose.

8. In each of the applications discussed above, CRS certified that all of the statements therein were true, complete, correct, and made in good faith.

III. DISCUSSION

9. Section 312(a)(2) of the Act provides that the Commission may revoke any license or construction permit "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application."⁸ The character of the applicant is among those factors that the Commission considers in its review of applications to determine whether the applicant has the requisite qualifications to be a Commission licensee.⁹

10. *Felony Convictions.* In assessing character qualifications, the Commission considers, as relevant, "evidence of any conviction for misconduct constituting a felony."¹⁰ The Commission has found that "[b]ecause all felonies are serious crimes, any conviction provides an indication of an applicant's or licensee's propensity to obey the law" and to conform to provisions of both the Act and the agency's rules and policies.¹¹ Thus, felony convictions raise potential questions regarding a licensee's qualifications.

11. Timothy M. Doty, who at all relevant times has been a director and 50% shareholder of CRS, has twice been convicted of felonies in state and federal courts. Mr. Doty's felony convictions raise

⁶ See FCC Form 601 – Instructions, p. 17.

⁷ *Id.*

⁸ 47 U.S.C. § 312(a)(2).

⁹ See *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Policy Statement and Order, 5 FCC Rcd 3252, 3252 (1990) ("1990 Modifications of Character Policy Statement"), *recon. on other grounds*, 6 FCC Rcd 3448 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992). The Commission has consistently applied these broadcast character standards to applicants and licensees in the other radio services. See, e.g., *Schoenbohm v. FCC*, 204 F.3d 243, 246-49 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 968 (2000) (affirming the Commission's denial of an amateur radio operator's license renewal application based on the licensee's felony conviction for computer fraud, as well as its lack of candor regarding such conviction); *Ronald Brasher et al.*, 19 FCC Rcd 18462 (2004) (affirming Administrative Law Judge's Initial Decision revoking, denying, or dismissing licensees' private land mobile radio licenses and applications based on the licensees' misrepresentations and lack of candor, unauthorized transfers of control, and abuse of process).

¹⁰ 1990 *Modifications of Character Policy Statement*, 5 FCC Rcd at 3252 ¶ 4. See, e.g., *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (Commission properly considered any felony conviction of broadcast licensee's principal as a relevant factor in evaluating propensity of licensee to obey the law).

¹¹ 1990 *Modifications of Character Policy Statement*, 5 FCC Rcd at 3252 ¶ 5. See also 47 U.S.C. § 312(a)(1) (authorizing license revocation "for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308").

serious questions as to whether he possesses the requisite character qualifications to be and remain a Commission licensee. Similarly, because of the extent of his ownership and control of CRS, Mr. Doty's felony convictions also raise serious questions about the character qualifications of CRS to be and remain a Commission licensee.¹² Consequently, we will designate appropriate issues for hearing to determine the effect, if any, of Mr. Doty's felony convictions on his basic character qualifications as well as those of CRS.¹³

12. *False Certification/Misrepresentation/Lack of Candor.* The courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing."¹⁴ Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.¹⁵ Misrepresentation is a false statement of fact made with intent to deceive.¹⁶ Lack of candor is concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive.¹⁷ Intent can be shown in many ways. If a licensee knowingly makes a false statement, that is sufficient proof of intent to deceive.¹⁸ Intent to deceive can also be inferred when one has a clear motive to deceive.¹⁹ Moreover, intent can be found when the surrounding circumstances clearly show the existence of intent to deceive, even if there is no direct evidence of a motive.²⁰ The Commission may revoke the license of a licensee who deliberately makes

¹² See *Williamsburg County Broadcasting Corporation*, Order To Show Cause and Order Requiring Consolidation, 5 FCC Rcd 3034(1990). See also *Commission Clarifies Policies Regarding Licensee Participation in Drug Trafficking*, Public Notice, 4 FCC Rcd 7533 (1989) (Commission regards drug trafficking as a matter of the gravest concern).

¹³ The facts of Mr. Doty's felony convictions are *res judicata* and will not be retried in this hearing.

¹⁴ *Contemporary Media*, 214 F.3d at 193. See also 47 C.F.R. § 1.17 (requiring truthful and accurate statements in all statements to the Commission); 47 C.F.R. § 1.65 (setting forth deadlines for revising or amending pending FCC applications if such applications are no longer substantially accurate or complete or there has been a substantial change as to any other matter of decisional significance); *Policy Regarding Character Qualifications in Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1210-11, ¶ 60 (1986) ("Character Policy Statement"), *recon. denied*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Ass'n for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987).

¹⁵ *Character Policy Statement*, 102 FCC 2d at 1210-11 ¶ 60. A false certification may also constitute a misrepresentation. See, e.g., *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, ¶ 19 n. 40-41 (2004), Initial Decision, FCC 06D-01 (ALJ April 7, 2006).

¹⁶ See *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983).

¹⁷ *Id.*

¹⁸ "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980).

¹⁹ See, e.g., *RKO General, Inc.*, Decision, 4 FCC Rcd 4679, 4684, ¶ 29 (Rev. Bd. 1989).

²⁰ *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n. 39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983) (Commission stated that "the absence of direct evidence of motive is not significant where the record otherwise clearly establishes that deceptive conduct has occurred.").

misrepresentations or lacks candor in dealing with the agency because he or she lacks the basic character qualifications to hold the license.²¹

13. CRS' failure to disclose the felony conviction of one of its principals raises a substantial and material question of fact as to whether CRS made false certifications, misrepresented facts to the Commission, and/or demonstrated a lack of candor. The mere existence of an inaccuracy in any application, without any indication that there was intentional deception, is insufficient to justify consideration of a misrepresentation issue in an evidentiary hearing.²² In this case, however, CRS had a motive for not revealing Timothy M. Doty's felony convictions to the Commission -- to conceal information that would potentially disqualify both CRS and Mr. Doty as Commission licensees.

14. CRS should have revealed the existence of Mr. Doty's felony convictions in applications that it filed with the Commission. Instead, CRS affirmatively represented otherwise in at least two license applications, and failed to disclose the convictions in at least five renewal applications. In each application, CRS also certified that all of the statements therein were true, complete, correct, and made in good faith even though its filings appear to have satisfied none of these standards. Under the circumstances presented here, we determine that a hearing is warranted under Section 312 of the Act to determine whether CRS and Timothy M. Doty's licenses should be revoked because they lack the requisite character to be or remain Commission licensees.

IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Sections 312(a) and (c) of the Communications Act of 1934, as amended,²³ and authority delegated pursuant to Sections 0.111, 0.311, and 1.91(a) of the Commission's rules,²⁴ CRS and Timothy M. Doty are hereby **ORDERED TO SHOW CAUSE** why their respective captioned authorizations **SHOULD NOT BE REVOKED**. CRS, by an officer representative, and Mr. Doty shall appear before an administrative law judge at a time and place to be specified in a subsequent order and provide evidence upon the following issues:

1. to determine the effect of Mr. Doty's felony convictions on his qualifications to be and to remain a Commission licensee;
2. to determine the effect of Mr. Doty's felony convictions on the qualifications of CRS to be and to remain a Commission licensee;
3. to determine whether CRS made misrepresentations and/or lacked candor and/or violated Section 1.17 of the Commission's rules regarding the felony convictions of Mr. Doty in any applications filed with the Commission;

²¹ *Contemporary Media*, 214 F.3d at 196 ("It is well recognized that the Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency) (citing *Schoenbohm*, 204 F.3d at 247. See also *FCC v. WOKO, Inc.*, 329 U.S. 223, 225-27 (1946); *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1221-24 (D.C. Cir. 1994); *Garden State Broadcasting Ltd. v. FCC*, 996 F.2d 386, 393-94 (D.C. Cir. 1993).

²² See, e.g., *Greater Muskegon Broadcasters, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15464, 15472-73, ¶¶ 22-23 (1996).

²³ 47 U.S.C. §§ 312(a) and (c).

²⁴ 47 C.F.R. §§ 0.111, 0.311 and 1.91(a).

4. to determine whether CRS failed to timely amend Commission applications to disclose Mr. Doty's felony convictions, in violation of Section 1.65 of the Commission's rules;
5. to determine whether CRS made false certifications in any applications filed with the Commission;
6. to determine, in light of the evidence adduced pursuant to the foregoing issues, whether Mr. Doty is qualified to be and to remain a Commission licensee;
7. to determine, in light of the evidence adduced pursuant to the foregoing issues, whether CRS is qualified to be and to remain a Commission licensee;
8. to determine, in light of the evidence adduced pursuant to the foregoing issues, whether the above-captioned licenses of Mr. Doty should be revoked;
9. to determine, in light of the evidence adduced pursuant to the foregoing issues (1) through (7), whether the above-captioned licenses of CRS should be revoked.

16. **IT IS FURTHER ORDERED** that, pursuant to Section 312(c) of the Communications Act of 1934, as amended, and Section 1.91(c) of the Commission's rules,²⁵ to avail the parties of the opportunity to be heard and the right to present evidence in the hearing in this proceeding, an officer representative of CRS and Timothy M. Doty, in person or by their respective attorneys, SHALL FILE with the Commission, within 30 calendar days of the release of this Order to Show Cause, a written appearance in triplicate stating that they will appear on the date fixed for hearing and present evidence on the issues specified herein.

17. **IT IS FURTHER ORDERED** that, pursuant to Section 1.92(c) of the Commission's rules,²⁶ if either CRS or Timothy M. Doty or both fails to timely file a written appearance as specified in paragraph 14, above, or has not filed a petition to accept, for good cause shown, a written appearance beyond the expiration of the 30-day period, the right to a hearing as to CRS and/or Mr. Doty SHALL BE DEEMED TO BE WAIVED. Where a hearing is waived, the presiding administrative law judge shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.

18. **IT IS FURTHER ORDERED** that, irrespective of the resolution of the foregoing issues, it SHALL BE DETERMINED, pursuant to Section 503(b)(1) of the Act,²⁷ whether an ORDER OF FORFEITURE in the amount not to exceed \$11,000 for each violation or each day of a continuing violation, up to a total of \$97,500 for any single act or failure to act should be issued against CRS for having failed to disclose the felony convictions of Timothy M. Doty in one or more of its applications, in willful and/or repeated violation of Sections 1.17 and 1.65 of the Commission's rules.²⁸ The forfeiture, if any, shall be adjusted based upon consideration of the factors enumerated in Section 503(b)(2), such as "the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the

²⁵ 47 C.F.R. § 1.91(c).

²⁶ 47 C.F.R. § 1.92(c).

²⁷ 47 U.S.C. § 503(b)(1).

²⁸ 47 C.F.R. §§ 1.17, 1.65.

degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.²⁹

19. **IT IS FURTHER ORDERED** that the Chief, Enforcement Bureau, SHALL BE MADE a party to this proceeding without the need to file a notice of appearance.

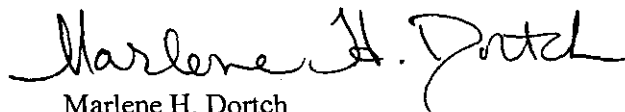
20. **IT IS FURTHER ORDERED** that, pursuant to Section 312(d) of the Act,³⁰ and Section 1.91(d) of the Commission's rules,³¹ the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above SHALL BE on the Enforcement Bureau.

21. **IT IS FURTHER ORDERED** that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order to Show Cause SHALL BE SERVED on Gary Schonman, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C237, Washington, D.C. 20554.

22. **IT IS FURTHER ORDERED** that, copies of this Order to Show Cause SHALL BE SENT, by Certified Mail, Return Receipt Requested, to CRS and to Timothy M. Doty at 915 S. Prospect Street, Terre Haute, Indiana 47802, and to counsel for CRS: Russell D. Lukas, Esquire, Lukas, Nace, Gutierrez & Sachs, 1650 Tysons Boulevard, Suite 1500, McLean, Virginia 22102.

23. **IT IS FURTHER ORDERED** that a copy of this Order to Show Cause or a summary thereof SHALL BE PUBLISHED in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

²⁹ See Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order, 12 FCC Rcd 17087, 17100-01, ¶ 27, 17112 Appendix A (1997), *recon. denied*, 15 FCC Rcd 303 (1999). See also 47 C.F.R. § 1.80(b).

³⁰ 47 U.S.C. § 312(d).

³¹ 47 C.F.R. § 1.91(d).